IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

BABU SINGH DHARIWAL. V. THE STATE OF RAJASTHAN AND OTHERS.

S.B.CIVIL WRIT PETITION NO.3653/2005,
under Article 226 of the Constitution of India.

DATE OF ORDER: 9.9.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.D.K.Gaur, for Petitioner.
Mr.S.K.Vyas, Government Advocate,
for the State of Rajasthan – Respondents No. 1 to 3.

BY THE COURT:

REPORTABLE.

By the instant petition, the petitioner has prayed that by an appropriate writ, order or direction, the suspension order dated 30.5.2005 (Annexure 10) and F.I.R. dated 2.5.2005 (Annexure 1) may be quashed and set aside.

Brief facts giving rise to the instant petition are that petitioner – Babu Singh Dhariwal was posted as Assistant Engineer, CAD Mohangarh Sub-Division 4, Indira Gandhi Nahar Project (IGNP), Mohangarh, District – Jaisalmer. At that time, a

complaint was received by the Antri-Corruption Bureau (ACB) that the petitioner, including Shri P.B.Mathur, Executive Engineer, and his companions, without completing construction work of Manuhar Minor issued a cheque of Rs.2,00,000/- to the Contractor. On this information, the Anti-Corruption Bureau (ACB) made a search and ultimately lodged a First Information Report (Annexure 1) against the petitioner – AEN, Shri P.B.Mathur, XEN and Shri Ramesh Chandra Joshi, JEN respectively. It is alleged by the petitioner in this petition that the construction work was legally done by the Contractor and Cement and Bazari were brought and labour work was done. Thereafter, research of soil for manufacturing of bricks was done. After satisfaction of the work, a Cheque amounting to Rs.1,92,166/- was issued, which was received back as dishonoured from the Bank.

It is averred by the petitioner in the instant petition that he submitted a representation dated 4.6.2005 to the Additional Director General, Anti-Corruption Bureau, Jaipur that all things have been done wrongly and the petitioner has been falsely implicated in this case. He, therefore, submitted that the investigation may be got done by any Senior Officer and a Final Report (Negative Report) may be issued.

It is further averred by the petitioner that by order dated 2.5.2005 (Annexure 8), the Additional Chief Engineer, CAD, IGNP, Jaisalmer constituted a 3-member Committee to inspect

the site and to submit report within three days. In compliance with the order dated 2.5.2005, the said Committee inspected the site and submitted its report dated 5.5.2005 (Annexure 9). The petitioner claims that the report was submitted in his favour. But, despite that, the Deputy Secretary, CAD, vide order dated 30.5.2005 (Annexure 10) has suspended him along with one Ramesh Chandra Joshi, JEN.

Being aggrieved by the suspension order dated 30.5.2005 (Annexure 10) and F.I.R. dated 25.2005 (Annexure 1), the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that a bare perusal of the order dated 30.5.2005 (Annexure 10) reveals that it has been passed by the Deputy Secretary, Department of CAD, on the ground that the petitioner was found to be indulged prima facie in making illegal payment of construction work. He submitted that the petitioner and one Shri Ramesh Chandra Joshi – JEN have been suspended, but the Head Incharge of Department - Shri P.B.Mathur has not been suspended, though his name does find place in the F.I.R.

It is further submitted by the learned counsel for the petitioner that for launching prosecution against him, the necessary sanction for prosecution is required by the Competent

Authority and further, no challan can be filed, without sanction and, according to the learned counsel, on account of registration of a criminal case against the petitioner, the suspension order cannot be passed. He submitted that the petitioner never demanded any bribe from anybody.

It is also submitted by the learned counsel for the petitioner that as per Rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules,1958 (hereinafter referred to as 'the Rules of 1958'), the Competent Authority has only jurisdiction to pass the order of suspension, in the event of contemplation of the enquiry against him or in the event of pendency of the criminal case. The Competent Authority of the petitioner is the Secretary, Irrigation Department, Government of Rajasthan, Jaipur, whereas the order dated 30.5.2005 (Annexure 10) has been passed by the Deputy Secretary, CAD and, according to the learned counsel for the petitioner, it is clear that the order of suspension passed by the Deputy Secretary is without jurisdiction.

It is contended by the learned counsel for the petitioner that the impugned order of suspension has been passed in arbitrary and hot haste manner and without application of mind. It has been passed without any jurisdiction and thus, it is violative of Article 14 of the Constitution of India.

It is further contended by the learned counsel for the petitioner that the impugned order of suspension has not been passed by the Competent Authority, i.e., the Secretary, Irrigation Department, who is the Appointing Authority of the petitioner also. Thus, according to the learned counsel, the impugned order of suspension dated 30.5.2005 (Annexure 10) has been passed by the Deputy Secretary, so, it suffers from the vice of lack of jurisdiction.

It is also contended by the petitioner that the FIR has been lodged against the present petitioner – AEN, Shri Ramchandra Joshi – JEN and Shir P.B.Mathur – XEN, but, vide order dated 30.5.2005 (Annexure 10), only the petitioner and Ramchandra Joshi have been placed under suspension and no action has been taken by the Department against the Supervisory Authority Shri P.B.Mathur – the Executive Engineer, whereas, the cheque has been issued by him.

It is argued by the learned counsel for the petitioner that Rule 13 of the Rules, 1958 provides that the Appointing Authority may place the employee under suspension, (a) where a disciplinary proceedings against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation or trial. Under Rule 13,

the word 'may' has been used by the Legislature and it has been said that the Appointing Authority may place a person under suspension. Learned counsel submits that instead 'shall', the word 'may' has been used, which clearly shows that the intention of the Legislature was that a person may or may not be placed under suspension.

It is submitted by the learned counsel for the petitioner that when the samples sent to the Research Officer were found to be correct material and the 3-Member Committee has submitted report in favour of the petitioner and the said Committee found that no illegal payment was made by the Department and the construction was actually done, then no offence is made out against the petitioner and the suspension order, according to the learned counsel for the petitioner, is bad in law.

Lastly, it is argued by the learned counsel for the petitioner that the cheque, in question, was issued by Shri P.B.Mathur, who is the Supervisory Authority and if any work has been done by the petitioner, the same has been done under his directions and guidance. The name of Shri P.B.Mathur does also find place in the FIR, but he has not been placed under suspension. Thus, according to the learned counsel, no offence as alleged has been made out against the petitioner.

Per contra, it is submitted Mr.S.K.Vyas, learned Government Advocate, appearing on behalf of Respondents No.1 to 3 that the petitioner was posted as AEN, CAD, Mohangarh, Sub-Division 15. An FIR under the Prevention of Corruption Act was filed against the present petitioner, who was working at the relevant time as Assistant Eingineer, Shri Prem Bihari Mathur XEN and one Shri Ramesh Chandra Joshi, JEN, in respect of work of Manuhar Minor ChaK 1 MNM. It is submitted that only cement and Bajri were unloaded at the site and the Contractor had not in fact started the construction work till the verification by the Anti-Corruption Bureau on 7.4.2005. Actually, the construction work was started at the site on 8.4.2005, as is evident from the inspection report dated 12.4.2005 (Annexure R/1) given by the Superintending Engineer, Circle II, CAD, IGNP, Jaisalmer, in which he has clearly mentioned that on 10.4.2005, when he conducted the inspection, the construction work was going on.

It is further submitted by the learned counsel for the respondents that the payment is made after completion of the work and there is no provision for separate payment in respect of transportation of bricks as well as well as cost of bricks. The cheque amounting to Rs.1,96,166/- (though the petitioner alleged it to be Rs.2,00,000/-) was illegally given to the

Contractor, even before the completion of work, which was dishonoured on account of delayed presentation by the Contractor and due to closure of financial year.

It is also submitted by the learned counsel for the respondents that the Committee inspected the site on 5.5.2005, but till then, the work had been completed. However, at the time of verification by the Anti-Corruption Bureau on 7.4.2005, the work had not even been started by the Contractor, whereas, it is significant to note that the cheque for the payment has been issued on 31.3.2005.

It is contended by the learned counsel for the respondents that so far as the contention of the petitioner that the name of Shri P.B.Mathur, XEN, does find place in the FIR and he was the Supervisory Authority, but he has not been suspended and the petitioner has been placed under suspension, is concerned, it may be pointed out that case of Shri P.B.Mathur is under consideration of the State Government. Apart from that, the petitioner has been placed under suspension in conformity with the provisions of Rule 13 of the Rules, 1958, as looking to the gravity of charges, which involves serious financial illegalities, the departmental enquiry has been contemplated against him under Rule 16 of the Rules. Thus, according to the learned counsel for the respondents, the contention of the petitioner is

totally misconceived that since no challan has been filed against him, he cannot be placed under suspension.

It is further contended by the learned counsel for the respondents that on 31.3.2005, even the work has not been started, yet the cheque has been issued to the Contractor after verification of the bill as well as the work by the petitioner. The entire payment is required to be made after completion of the work only.

It is also contended by the learned counsel for the respondents that the impugned order of suspension has been passed by the State Government in accordance with the Rules , 1958 and the whole proceedings were undertaken by the Secretary, Department of CAD. However, as per the Rules of Business, the order bears the signatures of the Deputy Secretary.

It is vehemently argued by the learned counsel for the respondents that on account of contemplation of departmental enquiry against the petitioner, he has been placed under suspension in accordance with the Rules, by the Competent Authority, after due application of mind. He pointed out that the cheque has been issued to the Contractor on 31.3.2005 in respect of the work, which has not even started on 8.4.2005, as

is evident from the statement dated 10.4.2005 (Annexure R/2), in which Sahiram of M/s. Madan Constrtuction Company, Bikaner; Shri Babulal – Assistant Engineer (now suspended) and Shri P.B.Mathur, XEN, have stated that, in fact, the work has been started on 8.4.2005.This statement (Annexure R/2) has been attested by the Superintending Engineer on 10.4.2005 itself. Not only that, even the Bill (Annexure R/3) stands verified for Rs.205339/- by the petitioner - Babu Singh Dhariwal, Assistant Engineer, under his signature and seal as well. Apart from that, Annexure R/3 shows the actual date of completion of work 8.10.05. It is pointed out that as per the agreement, the payment is made to the Contractor only after completion of work. The petitioner had verified the bill for the work which has not even started. When the petitioner was prima facie found guilty of verifying the bill for the work, which had not even started by the Contractor, then in contemplation of enquiry, he was placed under suspension along with one Shri Ramesh Chandra Joshi, Junior Engineer, under Rule 13 of the Rules. Thus, according to the learned counsel for the respondents, the order of suspension has been passed by the Competent Authority, with due applicationof mid and in accordance with the Rules, 1958.

In support of his contentions, learned counsel for the petitioner has placed reliance on the case of Ramesh Chand

Pareek v. Indian Red Cross Society, Rajasthan State Branch, Jaipur & Another (1992 (1) R.L.R. 472) and Kishan Singh v. State of Rajasthan & Another (1996 (2) WLC (Raj.) 118).

Heard learned counsel for the parties.

It is admitted position that the construction work had been started at the site on 8.4.2005, as is evident from the inspection report dated 12.4.2005 (Annexure R/1), submitted by the Superintending Engineer, Circle II, CAD, IGNP, Jaisalmer. It is also admitted position that the cheque had illegally been issued to the Contractor on 31.3.2005, even before completion of work, whereas the work has not even started before 8.4.2005. Not only that, even the petitioner himself has admitted in his statement (Annexure R/2) that the work had been started on 8.4.2005. This statement stands attested by the Superintending Engineer. It is also not in dispute that at the time of verification by the Anti-Corruption Bureau on 7.4.2005, the work had not even started. The 1st Running Bill (Annexure R/3) shows that the measurement of work was taken by the petitioner Shri Babu Singh (now, under suspension) and one Shri R.C.Joshi, JEN, on 27.3.2005, and the petitioner has verified the bill for Rs.205339/- under his signature and seal respectively. Annexure R/3 also contains a Certificate with 15 conditions. Condition No. 14 says that nothing is outstanding against the Contractor,

similarly Condition No.15 prescribes that the Pucca structures have been constructed along with line work. At the bottom of Annexure R/3, signature by verifying the aforesaid amount and seal of the petitioner have been affixed. The entire aforesaid facts and circumstances as well as the material available on record reveal a serious lapse of financial illegality as well as dereliction of duty on the part of the petitioner . Thus, on account of contemplation of departmental enquiry under Rule 16, the petitioner was placed under suspension in conformity with the provisions of Rule 13 of the Rules, 1958, as prima facie he was found guilty of verifying the bill and making the illegal payment to the Contractor, without completion of work. It is admitted position that the bill as well the work were verified by the petitioner as, at the relevant time, he was was working as Assistant Engineer, as is evident from the running bill (Annexure R/3) duly verified under his signature and seal. It is also admitted position that the entire payment ought to have been made after completion of the work.

It is settled proposition of law that the suspension is not a punishment. The suspension order is a non-punitive administrative device taken by the Government and is a cessation of the work for the time being. The suspension order is required to be read in the context of the entire case and combination of all the facts and peculiar circumstances of the

case. When the order of suspension indicates the application of mind by the Government to the allegations, enquiries and circumstances coupled with the financial illegalities, it cannot be said that the Government acted with mala fide intention. The suspension order can only be interfered with and can be declared illegal, if it is passed with ulterior motive, mala fide intention, beyond jurisdiction and without application of mind. A preliminary enquiry is generally made before passing the order of suspension which has been made in the instant case. In other words, a master can, subject to the contract of service, ask his servant not to render any service without assigning any reason. It is well settled law that the suspension does not cast any stigma on the delinquent employee since it is neither dismissal nor removal from service. Thus, the required procedure as provided under the law has been adopted and all the norms have been followed by the Government before passing the impugned order of suspension. The order of suspension indicates that the Government has applied its mind of allegations regarding financial illegalities, enquiries and circumstances of the instant case. The petitioner has failed to establish that the Government acted with mala fide intention. There are serious allegations of financial illegality, corruption and malpractice against the petitioner. Apart from that, the enquiry made by the Government reveals that there is a prima facie case of financial illegality against the petitioner, so the Government,

after considering the available material and having regard to the nature of the serious allegations of financial illegality as well as the modus operandi adopted by the petitioner and taking into consideration all the peculiar facts and circumstances of the instant case, suspended the petitioner in accordance with the Rules.

In view of the aforesaid facts and circumstances of the instant case, I do not find any ground to quash the FIR dated 2.5.2005 (Annexure 1), which has been registered against the the petitioner and others under Section 13 (1) (d) of the Prevention of Corruption Act as well as Sections 198, 468, 471 and 120-B of the Indian Penal Code (IPC). It is a matter of investigation which is required to be investigated by the Investigating Agency independently, as the serious allegations of financial illegality etc. and putting the State exchequer to a substantial loss, without completion of the Contract work and only showing the completion of work on papers have been levelled against the petitioner. It is a matter of serious concern that the Contractor has not started the work, but, the Bill (Annexure R/3) with regard to completion of work duly verified by the petitioner has been issued to him. Therefore, the matter is required to be investigated by the competent investigating agency and not by the Court. It will not be out of place to mention here that when the baby is not born, how she can be

throttled. Similarly, I find no sufficient ground as mentioned above to interfere with the order of suspension dated 30.5.2005 (Annexure 10) also.

The writ petition lacks merit and the same is, therefore, dismissed summarily.

There will be no order as to costs.

(R.P.VYAS), J.

scd.